

Stephen H.M. Bloch #7813
Tiffany Bartz # 12324
SOUTHERN UTAH WILDERNESS ALLIANCE
425 East 100 South
Salt Lake City, UT 84111
Telephone: (801) 486-3161

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**SECRETARY, BOARD OF
OIL, GAS & MINING**

Walton Morris, *pro hac vice*
MORRIS LAW OFFICE, P.C.
1901 Pheasant Lane
Charlottesville, VA 22901
Telephone (434) 293-6616

Sharon Buccino, *pro hac vice*
NATURAL RESOURCES DEFENSE COUNCIL
1200 New York Ave., NW, Suite 400
Washington, DC 20005
Telephone: (202) 289-6868

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

UTAH CHAPTER OF THE SIERRA CLUB,
et al.,

Petitioners,

Docket No. 2009-019
Cause No. C/025/0005

DIVISION OF OIL, GAS AND MINING,

Respondent, and

ALTON COAL DEVELOPMENT, LLC, and
KANE COUNTY, UTAH,

Intervenors-Respondents.

PETITIONER'S MOTION IN LIMINE

Utah Chapter of the Sierra Club ("Sierra Club"), Southern Utah Wilderness Alliance ("SUWA"), Natural Resources Defense Council ("NRDC"), and National Park Conservation Association ("NPCA")(collectively, "Petitioners") respectfully move this Board to enter an order

prohibiting the Division of Oil, Gas and Mining (“the Division”), Alton Coal Development, LLC (“ACD”), or Kane County, Utah (“Kane County”), (collectively, “Respondents”) from introducing or attempting to introduce evidence to dispute the Division’s testimony in its Rule 30(b)(6) deposition establishing each of the following facts:

1. the water quality standard for total dissolved standards (“TDS”) applicable to all streams in Coal Hollow is 1,200 milligrams per liter (*Transcript of the Deposition of the Division of Oil, Gas & Mining* (“Division Tr.”), Vol. II at 386);
2. the material damage criterion that the Division established for TDS in the CHIA for ACD's mine is less stringent than the applicable Utah water quality standard for TDS in the same waters (Division Tr. Vol. II at 387);
3. the Division’s sole basis for establishing a material damage criterion for TDS that is less stringent than the applicable Utah state water quality standard is the Division’s status as regulatory authority with respect to Utah’s approved state program for implementing the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201-1328 (“SMCRA”) (Division Tr. Vol. II at 387-88);
4. in specifying a material damage criterion for TDS that is less stringent than the applicable Utah water quality standard, the Division relied solely on actual water samples taken from the stream portions adjacent to the permit area, the results of which are recorded in the Division’s hydrologic data base for the Coal Hollow mine (Division Tr. Vol. II at 388-89, 406); and
5. one of the two sample results on which the Division relied in specifying a material damage criterion for TDS of 3,000 milligrams per liter is an invalid datum (Division Tr. Vol. II at 398).

Petitioners set forth their legal argument in favor of this motion is set forth in the supporting memorandum that they file simultaneously with this pleading.

WHEREFORE, based on the reasons set forth in Petitioners' supporting memorandum, they request that the Board enter an order prohibiting any of the Respondents from introducing or attempting to introduce evidence at hearing to dispute any of the facts set forth above.

Dated: April 19, 2010

Respectfully submitted,



By:

**Stephen
Bloch**

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Bloch
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Date: 2010.04.19 10:02:00
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Attorneys for Utah Chapter of the
Sierra Club, *et al.*.

Stephen H.M. Bloch #7813
Tiffany Bartz #12324
SOUTHERN UTAH WILDERNESS
ALLIANCE
425 East 100 South
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COUNCIL
1200 New York Ave., NW, Suite 400
Washington, DC 20005
Telephone: (202) 289-6868

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of April, 2010, I served a true and correct copy of **PETITIONER'S MOTION IN LIMINE** to each of the following persons via e-mail transmission and United States first-class mail, postage pre-paid:

Denise Dragoo, Esq.
James P. Allen, Esq.
Snell & Wilmer, LLP
15 West South Temple, Suite 1200
Salt Lake City, UT 84101
ddragoo@swlaw.com
jallen@swlaw.com

Bennett E. Bayer, Esq. (*Pro Hoc Vice*)
Landrum & Shouse LLP
106 West Vine Street, Suite 800
Lexington, KY 40507
bbayer@landrumshouse.com

Steven Alder, Esq.
Utah Assistant Attorney General
1594 West North Temple
Salt Lake City, UT 84114
stevealder@utah.gov

Michael Johnson, Esq.
Assistant Attorney General
160 East 300 South, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
mikejohnson@utah.gov

Jim Scarth, Esq.
Kane County Attorney
76 North Main Street
Kanab, UT 84741
mackeybridget@hotmail.com

 **Stephen
n Bloch**
Digitally signed by
Stephen Bloch
DN: cn=Stephen
Bloch, c=US
Date: 2010.04.19
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